***THE HONOURABLE SRI JUSTICE C.Y.SOMAYAJULU**

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+WRIT PETITION NO. 3586 OF 1996

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% 8-9-2005

Narapareddy Bujjamma

..Petitioner

Vs.

$ The District Collector, Nellore and Others

..Respondents.

!Counsel for the Petitioner : Sri K.Muralidhar Reddy

^Counsel for the Respondents : G.P. for Revenue

<Gist :

>Head Note:

?Cases Referred:

1979 (2) ALT 61 NRC

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION NO: 3586of 1996

THURSDAY, THE EIGHTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

Between:

Narapareddy Bujjamma.

.. petitioner

and

The District Collector, Nellore and others. .. respondents.

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO.3586 OF 1996

ORDER:

After the petitioner purchased Ac.0.90 cents of land in Survey No.304/2 of Chowta Bhimavaram village from K.Tirupalu (fourth respondent), under a registered sale deed dated 26.5.1990 for Rs.6,900/-, a notice in form No.I of A.P.Assigned Lands (Prohibition of Transfer) Rules, 1977 (for short 'the Rules') framed under A.P.Assigned Lands (Prohibition of Transfer) Act, 1977 (for short 'the Act') was issued to him by the Mandal Revenue Officer, (the third respondent), to show cause why the said land, which is an assigned land, purchased by him cannot be taken possession of from him and reassigned to the fourth respondent. Petitioner sent his reply to that notice through his advocate on 3.1.1996. After considering the said reply third respondent by his order dated 5.2.1996 directed the Mandal Revenue Inspector to take possession of the land purchased by the petitioner and restore possession thereof to the fourth respondent. The said order of the third respondent is challenged in this writ petition.

The main contention of the learned counsel for the petitioner is that since the petitioner is a bona fide purchaser for value from the fourth respondent, and is in possession and enjoyment thereof from the date of purchase, third respondent was in error in passing the impugned order without giving an opportunity of being heard to the petitioner. It is also his contention that petitioner filed a suit in the civil Court and obtained an injunction against the fourth respondent and so third respondent should not have passed the order impugned, ignoring the order of the civil Court. Relying on ***B.ANJAIAH vs DISTRICT COLLECTOR, NIZAMABAD*** he contended that the order impugned is not sustainable.

That the petitioner purchased the property from the fourth respondent under a registered sale deed dated 26.5.1990, i.e., long after the commencement of the Act,

is an admitted fact. As per Section 3 of the Act any transfer of land which is assigned to a landless poor person, made either before or after commencement of the Act is null and void. As per Section 3(5) of the Act transfers made in favour of a landless poor persons, who, in good faith and for a valuable consideration purchase the land from the original assignee prior to the commencement of the Act, are protected. So it is clear that Section 3(5) of the Act is an exception to the general rule and that Section 3(5) of the Act applies only to transfers that took place prior to the coming into force of the Act, i.e., 21.1.1977, which are made in favour of landless poor persons for valuable consideration and in respect of those who purchase the same in good faith. Petitioner, even assuming that she is a landless poor person, cannot claim the benefit of Section 3(5) of the Act inasmuch as she purchased the land from the fourth respondent in 1990, i.e., long after the Act came into force and since Section 3(5) of the Act does not apply to the transfers made subsequent to the coming into force of the Act.

Petitioner, in any event cannot even prima facie be said to be a bona fide purchaser, because she did not choose to produce the title deed of her vendor, i.e., fourth respondent, along with copy of the sale deed produced by her. It is well known that any ordinary prudent purchaser of immoveable property would obtain the title deed of the vendor as a voucher for tracing the title of the vendor. It is pertinent to note that in the schedule of the property purchased by the petitioner, mentioned in the sale deed in favour of the petitioner, copy of which is produced by the petitioner, it is mentioned that the vendor had obtained title to the land by virtue of patta No.376. So, as an ordinary prudent purchaser, petitioner should have enquired from the fourth respondent as to what the said patta is, and should have looked into that patta to find out if it is a patta granted by the Government or otherwise. Mere recital in the sale deed that the land being sold is not an assigned land would not be of help to the petitioner. If the fourth respondent made a false statement in the sale deed, the remedy of the petitioner is elsewhere, but it is of no help to her to wriggle out the provisions of the Act. There is nothing on record to show that petitioner made an enquiry as to how the fourth respondent acquired title to the land sold to her. Therefore, petitioner, prima facie, cannot even be said to be a bona fide purchaser.

I do not find any force in the contention of the learned counsel for the petitioner that the petitioner is entitled to an opportunity of being heard because no such opportunity is contemplated by Rule 3 of the Rules, which reads as under:

*"**3. Procedure for eviction of the transferee and taking possession and restoration of assigned land:-***

The District Collector or the authorized officer shall, before taking action under clauses (a) and (b) of Section (a) of Section 4 of the Act, issue a notice in form-I to the person who acquired any assigned land in contravention of the provisions of sub-section (2) of Section 3 of the Act. This notice shall be served by delivering a copy to him or to some adult male member of the family at his usual place of abode or to his authorized agent, or by affixing a copy thereof at some conspicuous place of his last known place of residence, or on some conspicuous part of the land acquired by him after expiry of 15 days specified in the notice, the District Collector, or authorized officer shall consider the representation, if any, received with reference to the said notice and pass such orders as he things fit and proper. If it is held that provisions of sub-section (1) of Section 3 of the Act have been contravened in respect of any assigned land a copy of the order shall be communicated to the village officer for taking possession of the land thereupon the land shall be disposed of in accordance with sub-clause (b) of clause (1) of Section 4 of the Act."

So, what is contemplated by the above Rule is the authorized officer taking into consideration the representation received and passing appropriate orders. Moreover, in the reply to the show cause notice, petitioner did not even seek an opportunity of being heard and did not ask for an opportunity to adduce any evidence. If she made such a request, may be, petitioner can say that she is prejudiced due to the non providing of an opportunity of being heard. When the Rule does not contemplate a separate opportunity of being heard being provided and when the petitioner herself did not seek an opportunity of being heard in her reply to the show cause notice, petitioner cannot be heard to say that she is prejudiced due to the lack of separate opportunity of being heard.

B.ANJAIAH's case (1 supra), relied on by the learned counsel for petitioner has no application to the facts of this case, because the said case relates to purchase of land from an assignee transfer of land in 1958, which is prior to the coming into force of the Act, for which, by virtue of Section 3(5) of the Act, the transferee has to be given an opportunity to establish that he purchased the land in good faith for valuable consideration and that he is a landless poor person and is in possession of the property by doing cultivation or is using it as a house site by the date of commencement of the Act, as these things can be established only after due enquiry but not otherwise. In respect of the sales that took place subsequent to the

coming into force of the Act, since the same is null and void, question of granting a further opportunity of being heard, after the transferee submitted explanation, is not contemplated by the Rules.

Petitioner filing a suit in a civil Court against the fourth respondent is not a bar for the third respondent passing the order impugned, because, as rightly observed by the third respondent in the impugned order, he is not a party to the said suit. Since, the petitioner failed to produce the copy of the plaint filed by him in the civil Court, it is not known whether she disclosed the factum of his purchasing the assigned land, and about the third respondent issuing a notice under the Act to him or not, in that plaint. The injunction against the fourth respondent, obviously, was an ex parte order of injunction. It is not known whether the suit is still pending or not. In any event since the third respondent is not a party to the suit and since civil Courts have no jurisdiction to entertain the lis relating to notices issued under the Act and the Rules, suit filed by the petitioner against the fourth respondent is not an impediment for the third respondent passing the order impugned.

Since the order impugned is passed by the third respondent under Section 4(1) of the Act, petitioner has the remedy of appeal to the Revenue Divisional Officer and further appeal to the District Collector from the order of the Revenue Divisional Officer, if the order passed by the Revenue Divisional Officer goes against him, as per Section 4A of the Act. Petitioner without availing the remedy of appeal filed this petition and for that reason also petitioner cannot be granted any relief in this petition.

For the above reasons, the writ petition is dismissed with costs.

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08.9.2005

mdaa.

Note:

L.R.Copy to be marked.